

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

LaSHAWN R. PETTUS-BROWN,

Petitioner,

: Case No. 1:14-cv-292

- vs -

District Judge Michael R. Barrett
Magistrate Judge Michael R. Merz

WARDEN, Correctional Reception
Center,

:

Respondent.

ORDER STRIKING MOTION FOR SUMMARY JUDGMENT

This habeas corpus case is before the Court on Petitioner's Motion for Summary Judgment (Doc. No. 31). Petitioner purports to bring his motion under Fed. R. Civ. P. 56. However, this is a habeas corpus action to which the Civil Rules are not automatically applicable. Instead, Rule 12 of the Rules Governing § 2254 Cases provides "[t]he Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provision or these rules, may be applied to a proceeding under these Rules."

In general, summary judgment procedure is inconsistent with usual habeas corpus practice. While the Court has authorized use of summary judgment procedure on some limited issues, it is inappropriate in this case, especially since the State has not yet been required to answer the Petition.

Because the Petitioner's Motion for Summary Judgment was filed without Court permission and in any event prematurely, it is STRICKEN.

In the body of his Motion, Petitioner asks that the Court withdraw Judge Barrett's Order

staying the case pending Petitioner's exhaustion of state court remedies and the Magistrate Judge's Order enforcing the stay (Doc. Nos. 29, 30). That request is denied. Petitioner remains obliged to file his motion for delayed direct appeal with the Ohio Supreme Court not later than April 19, 2015. The Magistrate Judge reiterates his conclusion that the due date for an appeal from the First District's denial of Petitioner's 26(B) application is April 13, 2015.

April 7, 2015.

s/ *Michael R. Merz*
United States Magistrate Judge